

MODEL
CRIMINAL JUSTICE ACT PLAN

(District with a Federal Public or Community Defender Organization)

Brackets denote optional language based on the configuration of defense services in the district.

CONTENTS

- I. Authority
- II. Statement of Policy
 - A. Objectives
 - B. Compliance
- III. Definitions
 - A. Representation
 - B. Appointed Attorney
- IV. Provision of Representation
 - A. Circumstance
 - 1. Mandatory
 - 2. Discretionary
 - B. When Counsel Shall Be Provided
 - C. Number and Qualifications of Counsel
 - 1. Number
 - 2. Qualifications
 - D. Eligibility for Representation
 - 1. Factfinding
 - 2. Disclosure of Change in Eligibility
- V. [Federal Public] [Community] Defender Organization
 - A. Establishment
 - B. Supervision of Defender Organization
 - C. Management of CJA Panel or
 - C. [Not used (if [federal public] [community] defender is not responsible for management of the CJA panel)]

- VI. Private Attorneys
 - A. Establishment of CJA Panel
 - B. Organization
 - C. Ratio of Appointments
- VII. [Not used (in states with no death penalty)] or
- VII. Representation in State Death Penalty Habeas Corpus Proceedings under 28 U.S.C. § 2254
- VIII. Duties of Appointed Counsel
 - A. Standards
 - B. Professional Conduct
 - C. No Receipt of Other Payment
 - D. Continuing Representation
- IX. Duties of Law Enforcement and Related Agencies
 - A. Presentation of Accused for Appointment of Counsel
 - B. Pretrial Services Interview
 - C. Notice of Indictment or Criminal Information
- X. Miscellaneous
 - A. Forms
 - B. Claims
 - C. Supersession
- XI. Effective Date

APPENDIX or APPENDICES:

[I. Bylaws of the Community Defender Organization] (omit if a community defender organization is not authorized by this CJA Plan)

I. [or II.] Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act

UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), section 3006A of title 18, United States Code, and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, the judges of the United States District Court for the ____ District of ____, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

_____A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the *CJA Guidelines* in a way that meets the needs of this district.

B. Compliance.

1. The court, its clerk, [the (federal public) (community) defender organization], [attorneys furnished by a bar association or legal aid agency], and private attorneys appointed under the CJA shall comply with the *CJA Guidelines* approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney shall be provided by the clerk of court with a then-current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The clerk shall maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.

- B. "Appointed attorney" includes private attorneys, [the (federal public) (community) defender and staff attorneys of the (federal public)(community) defender organization], [and attorneys furnished by a bar association or legal aid agency].

IV. PROVISION OF REPRESENTATION

A. Circumstance.

1. Mandatory. Representation shall be provided for any financially eligible person who:
 - a. is charged with a felony or with a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18, United States Code;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of title 28, United States Code;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of title 18, United States Code;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - l. faces loss of liberty in a case and federal law requires the appointment of counsel.
2. Discretionary. Whenever a judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
 - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of title 28, United States Code;
 - c. is charged with civil or criminal contempt who faces loss of liberty;

- d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
- e. is proposed by the United States attorney for processing under a pretrial diversion program;
- f. is held for international extradition under chapter 209 of title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies:
 - a. Federal Capital Prosecutions. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant to 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.
 - b. Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.
2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases, the following also applies:
 - a. Appointment of Counsel Prior to Judgment. Pursuant to 21 U.S.C. § 848(q)(5), at least one of the attorneys appointed must have been admitted to practice in the

court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Pursuant to 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the federal public defender or, if no such organization exists in the district, of the Administrative Office of the United States Courts.

- b. Appointment of Counsel After Judgment. Pursuant to 21 U.S.C. § 848(q)(6), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.
- c. Attorney Qualification Waiver. Pursuant to 21 U.S.C. § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Factfinding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.
2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

V. [FEDERAL PUBLIC] [COMMUNITY] DEFENDER ORGANIZATION

A. Establishment.

[Creation of New Organization]

1. Pursuant to subsections (g)(1) and (g)(2)(A) of the CJA, the Federal Public Defender Organization for the _____ District of _____ is hereby established. Upon

organization of the federal public defender's office, the federal public defender shall notify this court that he or she is available to accept appointments for representation.

or

Pursuant to subsections (g)(1) and (g)(2)(B) of the CJA, [the (name of community defender organization)], a community defender organization, [is] [shall be] designated to provide representation in this district. Upon organization of [the (name of community defender organization)], a community defender organization, the community defender shall notify this court that he or she is available to accept appointments for representation. A copy of the Bylaws of the community defender organization [are] [shall be] found at Appendix I of this CJA Plan.

or [Recognition of Existing Organization]

1. The Federal Public Defender Organization of the _____ District of _____, previously established in this district pursuant to the provisions of the CJA, is hereby recognized as the Federal Public Defender Organization for this district.

or

The (name of community defender organization), previously established in this district pursuant to the provisions of the CJA, is hereby recognized as a community defender organization for this district.

2. The [federal public] [community] defender organization shall be capable of providing legal services [throughout the district] [in the ____, ____, and ____ Divisions of the district] and shall maintain [an office in (city), (state)] [offices in (city), (city), and (city), (state)].
- B. Supervision of Defender Organization. The [federal public] [community] defender shall be responsible for the supervision and management of the [federal public] [community] defender organization. Accordingly, the [federal public] [community] defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the [federal public] [community] defender.
- C. Management of CJA Panel. The [federal public] [community] defender shall be responsible for the systematic distribution of cases to and for the management of the CJA Panel subject to the provisions of the Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act, found at Appendix I [or II] of this CJA Plan.

or

- C. [Not used (if the [federal public] [community] defender is not responsible for management of the CJA panel)].

VI. PRIVATE ATTORNEYS

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.
- B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I [or II] of this CJA Plan.
- C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

VII. [Not used (in states with no death penalty)].

or

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254

The court shall appoint a member or members of the Special Death Penalty Habeas Corpus Panel, [or the (federal public) (community) defender with his or her consent], [or a qualified attorney recommended by the (federal public) (community) defender], [or the state or county public defender], [or an attorney furnished by (name of bar association or legal aid agency)], [or other attorney who qualifies for appointment pursuant to section 848(q) of title 21, United States Code] to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under section 2254 of title 28, United States Code.

VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of [the American Bar Association's *Model Rules of Professional Conduct*] or [the American Bar Association's *Model Code of Professional Conduct*] or [other standards for professional conduct adopted by the Court].
- C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.
- D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by the circuit CJA plan provisions concerning representation on appeal), is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly ask any person who is in custody, or who otherwise may be entitled to counsel under the CJA, whether he or she is financially able to secure representation, and shall, in such cases in which the person indicates that he or she is not able, [notify the (federal public) (community) defender who shall discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and] arrange to have the person promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.
- B. Pretrial Services Interview. *[Consistent with the following resolution approved by the Judicial Conference during its March 1988 proceedings, state the district practice, if applicable, regarding the advice of counsel prior to the pretrial services interview:*

The Judicial Conference recognizes the importance of the advice of counsel for persons subject to proceedings under 18 U.S.C. § 3142 et seq., prior to their being interviewed by a pretrial services or probation officer. Accordingly, the Conference encourages districts to take the steps necessary to permit the furnishing of appointed counsel at this stage of

the proceedings to financially eligible defendants, having due regard for the importance of affording the pretrial services officer adequate time to interview the defendant and verify information prior to the bail hearing.]

- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States attorney or the probation officer, as appropriate, immediately shall mail or otherwise deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel, at the address shown on defendant's bond papers or to the jail in which the defendant is incarcerated.

X. MISCELLANEOUS

- A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of [the clerk of the court] or [the (federal public) (community) defender]. That office shall review the claim form for mathematical and technical accuracy and for conformity with the *CJA Guidelines*, and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

XI. EFFECTIVE DATE.

This Plan shall become effective when approved by the Judicial Council of the _____ Circuit.

APPENDIX or APPENDICES:

- [I. Bylaws of the Community Defender Organization] (omit if a community defender organization is not authorized by this CJA Plan)

I. [or II.] Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act

ENTER FOR THE COURT ON (month), (day), (year).

CHIEF JUDGE, DISTRICT COURT

APPROVED BY THE JUDICIAL COUNCIL OF THE _____
CIRCUIT on (month), (day), (year).

CHIEF JUDGE, COURT OF APPEALS

MODEL PLAN FOR THE
COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF
PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

[Defender Services Committee Comment: This "Model Plan" is intended to provide guidance in the establishment and operation of the Panel of private attorneys required under subsection (b) of the Criminal Justice Act, 18 U.S.C. §3006A. The "Model Plan" may either be incorporated into the existing District Plan for the Implementation of the Criminal Justice Act or promulgated as a supplement to that Plan by local rule. If the "Model Plan" is issued as a local rule, care should be taken to insure that no provision of the "Model Plan" is inconsistent with the District Plan for the Implementation of the Criminal Justice Act.]

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established pursuant to paragraph B. of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.

2. Size. The Court shall fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.

[Defender Services Committee Comment: This provision reflects the policy statement regarding the size of CJA Panels contained in paragraph 2.01 D of the Guidelines for the Administration of the Criminal Justice Act adopted by the United States Judicial Conference.]

3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan.

However, when the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the CJA panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent the CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him or her for admission to the district's CJA panel in the ordinary course of panel selection.

[Defender Services Committee Comment: The Defender Services Committee considered the question of whether detailed eligibility standards and minimum experience standards should be included. The Committee was of the view that while imposing specific qualification and experience requirements might ensure that only the most qualified attorneys become members of the panel in some districts, in other districts such specific requirements might render it difficult or impossible to find a sufficient number of attorneys to serve on the panel.]

The "Model Plan" thus contains only the very general eligibility requirement of membership in good standing of the federal bar of the district and demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines. More detailed and specific qualifications standards can, if desired, be developed and substituted locally by each district.]

4. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.

5. Terms. The initial CJA Panel established pursuant to this Plan will be divided into three groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the panel for a term of one year, members of the second group will serve on the panel for a term of two years, and members of the third group will serve on the panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years.

[Defender Services Committee Comment: In view of the provision in paragraph 1 above, and that of paragraph 2.01 D of the Guidelines for the Administration of the Criminal Justice Act that members of the CJA Panel shall serve at the pleasure of the court, some courts may not wish to have fixed terms for panel membership but rather have members of the panel serve continuously until they resign or are removed. If the above paragraph regarding terms of membership is deleted, the following paragraph pertaining to reappointment should also be deleted.]

6. Reappointment. A member of the CJA Panel shall not be eligible for reappointment to the panel for the one year period immediately following expiration of his or her term, unless waiver of this restriction is certified by the Court.

[Defender Services Committee Comment: As with the preceding paragraph, if a court should elect to have indeterminate membership on the panel rather than fixed terms, this paragraph should be deleted.]

7. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of the Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

B. PANEL SELECTION COMMITTEE

1. Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one district judge, one magistrate judge, one attorney who is entering the third year of his or her term as a member of the CJA Panel [, and the Federal Public or Community Defender]. The Committee shall be chaired by the district judge.

[Defender Services Committee Comment: The "Model Plan" provides for the screening and reviewing of the qualifications of applicants by a Panel Selection Committee consisting of one district judge, one magistrate judge, one attorney who is a senior member of the CJA Panel and, if there is a Federal Defender Organization in the district, the Federal Defender. The primary function of the Committee would be to consider applications, evaluate the qualifications of the applicants, and to make recommendations to the Court regarding appointments to the CJA Panel. The "Model Plan" calls for the Committee to meet at least annually, and leaves to the Committee the development of its own procedures, subject to any guidelines that may be established by the Court.]

The composition of the Panel Selection Committee can be adjusted to reflect the degree of judicial, Federal Defender, or Panel attorney involvement in the screening process that is desired by each district court. The court should make a diligent effort to ensure that the composition of the Panel Selection Committee also reflects the diversity of the community in regard to the categories listed in Paragraph I.A.4. above, in order to achieve the goals of that paragraph.]

2. Duties.

a. The Panel Selection Committee shall meet at least once a year to consider applications for the vacancies created by the terms expiring each year. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee shall also review the operation and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated, and shall be immediately eligible for reappointment notwithstanding the one-year restriction imposed by paragraph A(5) above, provided that the portion of the expired term actually served by the member did not exceed eighteen months.

c. When the Committee submits the names of applicants for panel membership to the Court for approval, the Committee shall furnish information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph I.A.4. of this model plan. At least once each year the Committee shall provide the court with information on the panel of attorneys in each of the categories listed in paragraph I.A.4. of this model plan.

[Defender Services Committee Comment: Recruitment efforts to provide opportunities for women, minorities, and otherwise qualified persons with disabilities could include the following:

- o Notifying bar associations composed of minorities, persons with disabilities, and women of the availability of panel membership;***

- o Advertising in legal journals targeted to persons with disabilities, minorities, and women to encourage panel membership;*
- o Informal person-to-person recruiting of persons with disabilities, minorities and women by panel administrators, and women and minority members of the panel, and members who have disabilities;*
- o Contacting current or former members of the panel or other prominent local attorneys who have disabilities or are minorities or women to seek recommendations of other persons with disabilities, minority and women practitioners.]*

C. CJA TRAINING PANEL

The Panel Selection Committee may establish a "CJA Training Panel," consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned, by the Court, to assist members of the CJA Panel in a "second chair" capacity. Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

[Defender Services Committee Comment: The "Model Plan" does not provide for a two-tier panel, i.e., one in which the more experienced members would be assigned to a felony panel and less experienced members to a misdemeanor panel. There are several reasons for rejecting this concept:

- (a) Many districts have a very small number of misdemeanor or petty offense cases, therefore there would be no need for a separate panel.*
- (b) Experience alone, whether in terms of years in practice, or number of trials, is not a reliable enough factor to serve as a standard or criteria in determining qualifications to handle serious cases.*
- (c) Certain misdemeanor and petty offense cases may be quite complex, and entail serious consequences if a conviction is obtained. Thus requirements for highly qualified counsel in these cases would not differ from the requirements for attorneys in felony cases.*
- (d) Avoiding a two-tier panel system precludes the possibility that attorneys might be viewed as more or less competent.*

The "Model Plan" also provides that the Panel Selection Committee may establish a "CJA Training Panel" consisting of attorneys who have not acquired the experience deemed necessary for membership on the CJA Panel. These attorneys could be assigned by the Court to assist members of the CJA Panel in a voluntary, "second chair," capacity. Training Panel members would not be eligible for independent appointments, nor for compensation. Training Panel membership would be neither a condition precedent to CJA Panel membership nor would service on the Training Panel guarantee admission to the CJA Panel. Training Panel members would be approved by the Panel Selection Committee, rather than by the Court.]

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS

The Clerk of the Court [Federal Public or Community Defender] shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Clerk [Federal Public or Community Defender] shall furnish a copy of this list to each judge and magistrate judge. The Clerk [Federal Public or Community Defender] shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public or Community Defender office and private attorneys, according to the formula described in the CJA Plan for the District.

[Defender Services Committee Comment: The Committee takes no specific position as to whether or not, and to what degree, Federal Public or Community Defender Organizations should be involved in the management and administration of the CJA Panel. In those districts in which the Court wishes the Federal Public or Community Defender Organization to undertake the responsibility for the maintenance of appropriate records regarding the CJA Panel and the distribution of cases, the Federal Public or Community Defender Organization, as shown in brackets, can be substituted for the Clerk of the Court.]

B. METHOD OF SELECTION

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant.

Upon the determination of a need for the appointment of counsel, the judge or magistrate judge shall notify the Clerk of Court [Federal Public or Community Defender] of the need for counsel and the nature of the case.

The Clerk of Court [Federal Public or Community Defender] shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Federal Public or Community Defender and the panel of private attorneys. If the magistrate judge or judge decides to appoint an attorney from the panel, the Clerk [Federal Public or Community Defender] shall determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the appointing judge or magistrate judge.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judge or magistrate judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Clerk of Court [Federal Public or Community Defender] as to the name of the attorney appointed and the date of the appointment.

[Defender Services Committee Comment: The "Model Plan" provides for an individual analysis of an attorney's qualifications with respect to each appointment, to ensure that the attorney selected has the experience and ability required to handle the particular case.

As with the preceding paragraph, discretion is left to individual courts to determine the degree to which, if at all, Federal Public or Community Defenders shall be involved in the management of the CJA Panel. The Federal Public or Community Defender, as indicated in brackets, can be substituted for the Clerk of the Court.]

III. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of the Court [Federal Public or Community Defender]. The Clerk of the Court [Federal Public or Community Defender] shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding judge or magistrate judge.